BEFORE THE STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

SBC COMMUNICATIONS INC., SBC DELAWARE INC., AMERITECH CORPORATION, and ILLINOIS BELL TELEPHONE COMPANY, d/b/a AMERITECH ILLINOIS	)	
	)	98-0555
Joint Application for approval of the reorganization of Illinois Bell Telephone Company, d/b/a Ameritech Illinois, and the reorganization of Ameritech Illinois Metro, Inc. in accordance with Section 7-204 of The Public Utilities Act and for all other appropriate relief.	)	

JOINT APPLICANTS' APPLICATION FOR REHEARING

SBC Communications Inc., Ameritech Corporation, and Illinois Bell Telephone Company, d/b/a Ameritech Illinois ("Joint Applicants"),[1] pursuant to Rule 200.880, hereby apply for rehearing or clarification of the Illinois Commerce Commission's September 23, 1999 Order in the captioned docket. In support of their application, Joint Applicants state as follows:

CLARIFY THAT $90 MILLION IN LIQUIDATED DAMAGE APPLIES TO NON-PERFORMANCE OF 122 BENCHMARKS

The Order identifies $90 million as the potential penalty for Joint Applicants' failure to implement all 122 performance measures (excepting those the Commission has waived) within 300 days of the closing. Joint Applicants had proposed a $30 million potential assessment, while agreeing that up to $90 million of liquidated damages could potentially be paid to their CLEC customers for failure to meet the benchmarks once they were put in place. As explained below, since the Commission's Order followed the template of Joint Applicants' proposed conditions, it

[1] As a result of the closing of the merger, Joint Applicants SBC Delaware, Inc and Ameritech Corporation are now a single corporate entity known as Ameritech Corporation.

appears that the imposition of a $90 million penalty for failure implement the benchmarks -- instead of setting $90 million as a cap for non-performance -- was a clerical error.

Page 220 of the Commission's Order states that "if the Joint Applicants fail to implement all 122 performance measurements, minus those waived by the Commission, within 300 days from the merger closing, they shall pay a $26.25 million penalty distributed to CLECs on the basis of access lines and $3.75 million to the Community Technology Fund described below." This is consistent with Joint Applicants' proposed assessment and adds up to $30 million. However, page 221 of the Order states that "Liquidated damages *for failure to implement* the performance measures shall not exceed $90 million. (SBC/Ameritech, Attachments 1 and 2 to Proposed Order on Re-Opening, p. 9)." (Emphasis added.)

Similarly, while ordering paragraph (30)4 states that "[l]iquidated damages *for failure to implement* the performance measures shall not exceed $90 million" (emphasis added), ordering paragraph (30)6 describes a payment of $30 million for failure to implement the benchmarks. The $90 million proposed by Joint Applicants and referenced in the Attachments 1 and 2 to the Proposed Order on Re-Opening refers to liquidated damage caps, not the penalty for failing to implement. Joint Applicants' proposal as well as the Commission's Order only provide for the disposition of $30 million assessment for failure to implement.

Therefore, Joint Applicants request that the Commission amend its order to clarify that $90 million is the liquidated damage cap, while the assessment for failure to implement benchmarks remains at $30 million. The Commission can make this clarification by making the following edits to the sentences that appear on pages 221 and in Condition (30)4:

> Page 221: "Liquidated damages for ~~failure to implement the~~ <u>not meeting the</u> performance measures shall not exceed $90 million. (SBC/Ameritech, Attachments 1 and 2 to Proposed Order on Re-Opening, p. 9)."

Condition (30)4: "Liquidated damages for ~~failure to implement the~~ not meeting the performance measures shall not exceed $90 million."

SCHEDULE FOR IMPLEMENTING
BENCHMARKS SUBJECT TO WAIVER REQUESTS

As set forth in the Commission's Order, within 150 days of the Merger Closing, Joint Applicants "shall submit to the Commission for approval a written report detailing . . . an explanation of why SBC/Ameritech contend that implementation of any particular measurement, standard/benchmarks, or remedy is infeasible." Order at 257, Condition (30)4. Through that filing, Joint Applicants will have the opportunity to seek waiver of any of the 122 benchmarks that are technically infeasible and the Commission will rule on any such waivers. *Id.* As presently set forth in the Order, however, Joint Applicants will be subject to some part of a $30 million penalty if, within 300 days of the merger closing Ameritech Illinois fails to implement any benchmark for which it has not received a waiver. *See id.* ("The Commission shall . . . determine the value of each missed measurement and standard/benchmark in the event that SBC/Ameritech does not implement a particular measurement or standard/benchmark, or that it does not seek a waiver from such a requirement within 300 days of the Merger Closing Date").

Two problems could arise. First, should the Commission simply not complete its deliberations on the waiver issue by the 300-day deadline, Joint Applicants run the risk of being assessed a yet-to-be-determined penalty. Second, should the Commission make an affirmative decision not to grant a waiver at some time before the 300 days have run, Joint Applicants may not have sufficient time to provision a benchmark (even assuming that, contrary to Joint Applicants' understanding, there is any technically feasible way to provision it). Joint Applicants respectfully request that the Commission amend the Order to provide that, as part of a request for waiver, Joint Applicants and Staff would agree to a contingent implementation period following

any denial of the waiver to implement the benchmark. As a result, Joint Applicants would not be deemed out of compliance unless (a) their request for a waiver was denied and (b) the benchmark was not implemented within the later of 300 days of the Closing or the contingent implementation period.

To accomplish this change, Joint Applicants propose the following changes to Condition (30)4:

> Within 150 days following the Merger Closing Date, the task force will complete its initial review of performance measurements/standards/benchmarks/remedies with the collaborative participants. One hundred and fifty days after the Merger Closing Date, the Joint Applicants shall submit to the Commission for approval a written report detailing the timeline for implementing each of the performance measures, associated standards/benchmarks, and remedies, or an explanation of why SBC/Ameritech contend that implementation any particular measurement, standard/benchmark, or remedy is infeasible. For any standards/benchmarks or remedies for which Joint Applicants request a waiver, Joint Applicants and Staff shall also provide a contingent implementation period for use if the Commission ultimately decides not to grant the waiver. The Commission may grant waivers from certain measurements, standards/benchmarks, and remedies, and shall determine the value of each missed measurement, and standard/benchmark in the event that SBC/Ameritech does not implement a particular measurement or standard/benchmark, or that it does not seek a waiver from such a requirement within 300 days of the Merger Closing Date. A Commission Order denying a waiver shall trigger the running of the contingent implementation period agreed to by Joint Applicants and Staff. Joint Applicants shall not be deemed to be out of compliance with a standard/benchmark or remedy for which a waiver is requested unless the Commission issues an order denying the waiver and both the 300 days from Closing and the contingent implementation period have run for implementation of the standard/benchmark or remedy. Liquidated damages for ~~failure to implement the~~ not meeting the performance measures shall not exceed $90 million.

SYNCHRONIZATION OF THE OSS COLLABORATIVE TIMELINES

In their proposals to this State and to the FCC, Joint Applicants undertook to initiate a collaborative process for improving and standardizing OSS interfaces between Joint Applicants' ILEC affiliates and their CLEC customers. While Joint Applicants wished to ensure that Illinois CLECs obtained the full benefit of OSS improvements, Joint Applicants also recognized that any OSS improvements made pursuant to the FCC commitments will be applicable to Illinois. Moreover, Joint Applicants recognized that a major benefit of the condition proposed to the FCC was to ensure that OSS improvements were consistent across all 13 of the SBC/Ameritech states. To this end, Joint Applicants proposed a timeline for implementation in Illinois that was consistent with its FCC timeline so that Illinois could benefit from the FCC process and maintain a suitable consistency with the FCC process.

Nevertheless, as part of its Order, the Illinois Commission substantially shortened Joint Applicants' timeline in Illinois. While the Commission's apparent motivation in accelerating the schedule was to make Illinois first among the 13 SBC/Ameritech states, it will have the likely effect of placing Joint Applicants *and* CLECs that operate in Illinois at risk of having inconsistent obligations under the two different collaborative processes. These inconsistencies would have to be reconciled, with the likely result that Illinois' compressed timeline will create more problems than results. It is in everyone's interest to plan, adopt, and implement one common design.

For example, in the initial critical phase of the project, the Illinois Commission shortened Joint Applicants' time for filing a Plan of Record (the proposal for comprehensive OSS goals) from 150 days (five months) to 90 days (three months). By comparison, the FCC adopted the 150-day plan. While the Illinois Order (at 195-97) requires the Illinois Staff to closely monitor

the FCC's OSS integration process, the Illinois process as now scheduled will reach critical decisions before the FCC process is likely to propose a solution. In sum, there is no apparent method of integrating any FCC improvements into an Illinois process that, according the schedule reflected in the Order, may already be in the implementation phase. This could cause major problems if FCC solutions take a different tack from those already implemented in Illinois. More importantly, such an outcome seems likely given the short timelines required by the Illinois Order.

The timeline proposed to the FCC and committed to in Illinois was the most aggressive timeline that Joint Applicants believed feasible.[2] In making their commitment, Joint Applicants took into account not only the massive scope of the project being undertaken, but the fact that, to be successful, it would require input from SBC/Ameritech's CLEC customers who are also SBC/Ameritech's competitors. Although it is not SBC's intent to develop two divergent plans, there are definite benefits to soliciting input from as diverse a CLEC body as possible. If the Illinois collaborative process precedes the FCC collaborative process, CLECs will be required to provide input that may ultimately be superseded by CLEC input obtained from the FCC collaborative process, which will rely on an FCC Plan of Record that is more developed than the corresponding Illinois Plan of Record.

Additionally, given the schedule in the Illinois order, CLECs will also be faced with the choice of expending resources to collaborate in an Illinois-specific plan that could very well be

[2] Intervenors may argue that the Illinois process should be shorter to reflect SBC's existing experience with the process in Texas. However, while the collaborative process in Texas has resulted in the further enhancement of SBC's OSS, not all the benefits of the collaborative are portable to Illinois. The intent isn't simply to lift the OSS out of Texas and drop them into Illinois. This approach would deny CLECs the benefits of OSS enhancements that have been developed in other SBC regions as well as the existing unique capabilities of the OSS already developed and deployed by Ameritech that may or may not be compatible with the approach negotiated in Texas. These differences are exactly the foundation for the assessment of OSS capability that both the ICC and FCC orders call for. To ignore this important step and presume that careful analysis of these differences can be substituted with a

inconsistent with the ultimate FCC 13-state plan where the FCC process appears to be a better investment. For example, even if the plans do not contain different enhancements, the FCC plan will -- based on its more deliberative timeline -- be more detailed and refined as a result of further analysis and planning. CLECs will be in a position either to begin development of the changes necessary on their side of the interface for Illinois standards and then to rework that development based on these refinements in the FCC plan or to simply wait for the conclusion of the FCC plan to begin development.

In addition to the problems caused by the Illinois collaborative process preceding the FCC collaborative process, the Illinois Plan of Record cannot be produced in the current three-month timeframe primarily because most CLECs will not be incented to participate in producing a one-state Plan of Record two months prior to the FCC 13-state Plan of Record. Despite best efforts, it is possible that some of the changes necessary to satisfy the FCC plan would not yet be included in the Illinois requirement. (It is probable that some may not even be identified in three months.) For example, it might be necessary to make changes only to the existing Illinois EDI interface to implement an Illinois plan, while a common 13-state interface might necessitate the development and deployment of a completely new interface. In this instance, a CLEC would be faced with planning and implementing the Illinois plan or waiting for the superseding 13-state enhancements, which may require additional (or inconsistent) changes.

Joint Applicants believe that Illinois would benefit from synchronizing at least its Plan of Record phase with the FCC Plan of Record in order to promote consistency and ensure that the Illinois Commission, when considering Joint Applicants' Plan Of Record, has the benefit of a completed Plan Of Record at the FCC. Therefore, Joint Applicants request that Condition (29)

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plan that was developed in another territory where the underlying business processes, infrastructure and products offered vary could only result in an inferior product.

of the Order be amended as follows to extend the time for completing a Plan or Record to the same 150 days from Closing:

> Deployment of the application-to-application interfaces will be carried out in three phases.
>
> - Phase 1: Within ~~3~~ 5 months after the Merger Closing Date or final regulatory approval, Joint Applicants shall complete a publicly available Plan of Record which shall consist of an overall assessment of SBC's and Ameritech's existing OSS interfaces, business processes and rules, hardware and data capabilities, and security provisions, and differences, and the companies' plan for developing and deploying application-to-application interfaces and graphical user interfaces for OSS, as well as integrating their OSS processes. The Plan of Record shall be accepted, or rejected, by this Commission after an expedited (two week) CLEC comment cycle.

Assuming that the Commission either synchronizes or finds some means of integrating the FCC Plan of Record into the Illinois OSS collaborative process, the Commission must still recognize that the FCC Plan of Record will include a roll out that spans the entire 18-month implementation period and that the FCC implementation schedule is expected to monopolize Joint Applicants' resources during the entire 18-month period. Therefore, simply from a resources perspective, it will be impossible for Joint Applicants to roll out OSS improvements in Illinois on any different schedule from the one determined in the FCC collaborative process. (Of course, all element of the FCC collaborative process will be made available in Illinois as they are made available nationally.) But those elements that are slated for roll out under the FCC plans after the close of the Illinois implementation period cannot be implemented sooner in Illinois.

Again, for Illinois to maintain a role in the entire deployment schedule, it should synchronize its schedule with the FCC's. Therefore, Joint Applicants believe Illinois will be better served by synchronizing the entire Illinois schedule with the FCC schedule. To that end, Joint Applicants propose the following additional changes to Condition (29):

- Phase 3: SBC/Ameritech shall develop and deploy, on a phased-in basis, the system interfaces, enhancements and business requirements consistent with the written agreement obtained in Phase 2. The date for completion of Phase 3 is ~~12~~ 18 months after completion of Phase 2, unless a majority of the CLECs participating in Phase 2 agree to an extension. The completion date shall begin to run after the completion of a written agreement in Phase 2, or the effective date of a final decision by the Commission acting as arbitrator in Phase 2, whichever is later. If one or more CLECs contend that SBC/Ameritech has not developed and deployed the system interfaces, enhancements, and business requirements consistent with the written agreement obtained in Phase 2, or has not complied with the Commission's decision received in Phase 2, they may file a complaint with the Commission which shall arbitrate the issue(s) consistent with the procedures identified in Phase 2 except that this arbitration shall be concluded within 2 months.

TIMING OF LRSIC, TELRIC AND SHARED AND COMMON COST STUDIES

Condition (12) requires Ameritech Illinois to file revised LRSIC, TELRIC and shared and common cost studies within six months of the last regulatory approval and Staff is to work with Ameritech Illinois to establish priorities for the updating of these studies. This condition, if interpreted literally, is not consistent with the record in this proceeding and is not administratively feasible.

The record in this proceeding does not support a requirement that all cost studies be updated within a six-month period. Although Staff witness Toppozada-Yow did initially recommend a six-month update period, Ameritech Illinois responded that such a requirement was infeasible because of the magnitude of the work effort. (Gebhardt Rebuttal, SBC/Am. Ex. 3.1, at 117-21.) In rebuttal, Staff modified its position. Although Ameritech Illinois would be required to update its TELRIC cost studies within six months (including the related shared and common cost studies), the Company would only be required to "begin" updating its LRSIC studies to satisfy specified legal requirements. Beyond that, the Company and Staff would

prioritize the updating of cost studies for other services for completion beyond the six-month period. (Toppozada-Yow Rebuttal, Staff Ex. 3.01, at 45-46.) Joint Applicants accepted Staff's revised proposal in so far as workload issues were concerned in their surrebuttal testimony. (Gebhardt Surrebuttal, SBC/Am. Ex. 3.2, at 48-49.) Since Staff and Ameritech Illinois were the only parties to address this issue, with no opposition testimony from any other party, Ameritech Illinois believes that the contrary wording of Condition (12) was unintentional.

Factually, nothing has changed relative to the administrative problems presented by a comprehensive six-month study update requirement. The Company fully accepts Staff's proposal to update the TELRIC and shared and common cost studies within the next six months. However, Ameritech Illinois has tariffed over 7,000 rate elements which are subject to LRSIC costing. Preparation of updated cost studies for all 7,000 rate elements would be extraordinarily burdensome. As stated by Mr. Gebhardt, a work effort of this magnitude would normally be spread out over a period of years, not months. Moreover, unless a docket is pending in which rate adjustments have been proposed, there is no compelling regulatory need for updated LRSIC studies. Docket 98-0335 (rate rebalancing) is a proceeding which would require updated cost studies and that is one of Staff's priorities. (Toppozada-Yow Rebuttal, Staff Ex. 3.01, at 44-45.) However, the vast majority of Ameritech Illinois' LRSIC-based rates are not the subject of any proceeding right now and are not likely to be in the near future.

Accordingly, Ameritech Illinois and Staff should be permitted to prioritize this work as Staff and the Company agreed in the hearing portion of the proceeding. Condition (12) and the text that appears on page 124 of the Order should be rewritten as follows:

> Page 124: ". . . We are of the opinion and will require however, that within six months from the date of merger approval, the merged company should submit updated ~~LRSIC~~ TELRIC and shared and common cost studies. LRSIC studies should begin to be updated within this period in accordance with the priorities to be

agreed upon between Ameritech Illinois and Staff. We will use these updated studies in the merged Company's request for rate rebalancing, in ~~the two~~ any TELRIC investigations or other investigations as deemed appropriate."

Condition (12): "LRSIC & TELRIC -- Ameritech Illinois will file revised ~~LRSIC~~ TELRIC and shared and common cost studies with the Chief Clerk of the Commission within six months after the last regulatory approval of the proposed reorganization. Ameritech Illinois will begin to file revised LRSIC cost studies with the Chief Clerk of the Commission within six months after the last regulatory approval of the proposed reorganization. It is noted that Staff is willing to work with Ameritech Illinois to establish a priorities list for such updates. The Commission will utilize the updated studies in its analysis of the Company's request for rate rebalancing and in ~~the two~~ any TELRIC investigations.[3]

ALLOWING TIME FOR MAINTENANCE OF PRE-LOOP QUALIFICATION SYSTEM

The Commission's Order requires Ameritech Illinois to deploy an electronic system that provides specified pre-loop qualification information to CLECs. Joint Applicants have no objection to this requirement. However, the Order (at 197) requires that this information be made available in an online format 24 hours a day.

Twenty-four hour availability is administratively infeasible. Ameritech Illinois' OSS systems are highly complex and some amount of nightly "down-time" is required to keep them functioning properly. There are three principal operations that are performed during this nighttime downtime. First, for those systems which accumulate data, data back-ups are performed at night to protect against a system failure or malfunction. Second, OSS systems are regularly updated through the installation of new software and/or hardware. Software and hardware additions may provide new capabilities, expand capacity or correct problems that have been identified in current operations. These additions must not only be installed, but must also be tested to ensure that they are functioning properly. It is generally inadvisable, and, in some

cases, impossible, to make software/hardware changes while the system is operational and accepting live customer data and/or inquiries. Third, Ameritech Illinois' practice is to have technical staff available during much of the period that its systems are operational to monitor system performance and respond to CLEC customer questions. Technical staff would not be available during the additional hours required by 24-hour availability.

This requirement is also not necessary to effectively meet the needs of the CLECs. Today, Ameritech Illinois makes its OSS systems available for substantial parts of the day, but not 24 hours a day. For example, its preordering system is available from 6 a.m. to 10 p.m. Monday-Friday and 7 a.m. to 7 p.m. on Saturday; its ordering system is available from 6 a.m. to 11 p.m. Monday-Friday and 7 a.m. to 7 p.m. on Saturdays. Ameritech Illinois maintains a continuing dialogue with the CLECs through the monthly CLEC forums and other communications channels. CLECs can request expansion of Ameritech Illinois' business hours. To Ameritech Illinois' knowledge, OSS system availability is not an issue at this time, since Ameritech Illinois' normal hours of operation are consistent with the industry.

Accordingly, Joint Applicants suggest that the 24-hour requirement be deleted from the text of the order. The availability of the pre-loop qualification system can and should be addressed by Ameritech Illinois and the CLECs in the collaborative process established in Condition (29). The relevant sentence on page 197 of the Order should be modified as follows:

> Page 197: "Specifically, Joint Applicants shall ensure that OSS systems, once modified in the three-phase process to interface with CLECs, provide the following information in an online format ~~available 24 hours a day~~:. . .

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[3] At this time, there is only one docket pending which involves TELRIC-based prices (Docket 98-0396). Therefore, this condition should be rephrased to eliminate the reference to "two" TELRIC investigations to avoid confusion.

RECORDATION OF ALL SAVINGS AND COSTS

Condition (26) requires Joint Applicants to record all savings and costs related to the merger and return 50% of the net savings to customers. This savings flow-through will be filed at the time of Ameritech Illinois' annual price cap filing. Ameritech Illinois accepts this condition. However, certain of the time frames specified in the text of the Order are inconsistent with both the operation of Joint Applicants' accounting systems and the annual filing process itself.

In the text of the Order, the Commission requires Ameritech Illinois to track its share of all actual merger-related savings and merger-related costs separately for the period beginning at consummation of the merger and ending on *March 15, 2000*. This information must then be supplied to the Commission as part of the April 1, 2000, price cap filing and, if there are any savings, there must be price changes that go into effect on July 1, 2000.[4] This process continues until an updated price cap formula has been developed. Order at 149.

The two-week time frame between March 15 and April 1, 2000 is much too short. First, the corporate books close on a monthly, not a weekly, basis. Therefore, aggregate cost and savings data cannot be readily produced for partial months, as the Order would require (*i.e.*, March 1-March 15). Second, the corporate books close on the tenth *work* day of the month (approximately the 15th calendar day) following the month for which data is desired. Once the corporate books are closed, the data must be evaluated for use in tracking merger savings and appropriate reports must be generated. Then additional time is required to analyze this data and to ensure that it accurately and completely reflects the corporate books; if any problems appear, then additional time may be required to identify the source and correct the reported data. Thus, based on SBC's experience in tracking merger savings for PacBell, it will take more than 30 days

after the books close on any particular month to develop reliable cost and savings data for submission to the Commission, and, in some instances, more time than that. Joint Applicants view January as the last month of data that could reliably be submitted to the Commission in an April 1, 2000, filing.

Furthermore, as required by the Commission's order in Docket 92-0448, the annual price cap filings and related annual reports are based on one of two 12-month periods: (1) July to June for the GDPPI and API; and (2) the prior calendar year for exogenous changes, service quality, infrastructure investment, all financial data and certain other information. (*Order in Docket 92-0448*, adopted October 11, 1994, at 93-94). It would generate additional complexity in the price cap filing process to inject yet another calendar-year period into the process (*i.e.*, one that ends January 31), particularly one that is to be used for financial data. Accordingly, Joint Applicants recommend that the measurement period for merger costs and savings be changed to be consistent with the requirements of the price cap filing for other financial data (*i.e.*, December 31). At a minimum, however, the March 15 date should be moved back to January 31.

The Commission does not address the measurement period to be used in subsequent years. Joint Applicants assume that conventional calendar year periods would be used in the year 2001 and subsequent filings (of course, only 11 months of the year 2000 would be considered in the year 2001 annual filing, if January 2000 is included in the year 2000 annual filing). If, instead, January-January annual data were required, the savings calculations would remain permanently out-of-sync with the rest of the price cap filing financial data.[5]

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[4] The Joint Applicants do not anticipate any net savings in the first year.

[5] Condition (28) of the Commission's Order requires the Joint Applicants to file a petition within 30 days of any FCC decision that shared transport is not required by TA96 seeking an Illinois-specific determination of that issue and to provide shared transport during the pendency of that petition. On September 15, 1999, the FCC adopted new unbundled access rules as required by *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721, 734-36 (1999) in the "UNE Remand" proceeding. The FCC has yet to make public its order in that docket (CC Docket No. 96-98). Based on the FCC's press release, Joint Applicants believe that this requirement in the Illinois merger order will

CONCLUSION

Joint Applicants respectfully request that the Commission grant rehearing on the foregoing issues and clarify or amend their Order as requested.

DATED this 25th day of October, 1999.

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directly conflict with federal law and may not be imposed on Joint Applicants. In the absence of the text of the FCC's order, however, the Joint Applicants will address this issue in the 30-day petition required by the merger Order.

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